IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 7317 TO 7342 of 1995
with
CROSS OBJECTION Nos. 125 TO 150 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SPL.LAQ OFFICER

Versus

PRATAPJI H THAKORE

Appearance:
MR JM THAKORE Sr.Counsel for MR. AJAY R MEHTA &
MR NEERAV THAKKAR advocates for appellants.
NOTICE SERVED for Respondent No. 1
MR PG DESAI GP & MRS AMEE YAGNIK AGP for Res.No.2
MR AJ PATEL, MR GM AMIN & MR SK ZAVERI for the claimants and Cross-objectors.

CORAM : MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT
Date of decision: 12/10/98

ORAL JUDGEMENT (PER : M.R.CALLA J)

1. All these 26 First Appeals and 26 Cross Objections filed therein are directed against the common judgment and order dated 31st July, 1995 passed by the learned Assistant Judge, Mehsana, in Land Acquisition Reference Cases Nos. 133 to 138, 140 to 145, 300, 307 to 313, 514 to 518/90,. Whereas the appeals and Cross Objections arise out of a common judgment and order as aforesaid and involve common questions of law based on identical facts, we propose to decide all these 26 First Appeals and 26 Cross-Objections by this common judgment and order.

2. The lands situated at village Saij, Taluka-Kalol, District Mehsana, were sought to be acquired for the public purpose for ONGC storage Tank. The Notification under section 4 of the Land Acquisition Act, was published in the Gazette dated 1st April 1986 for acquisition of the lands mentioned therein and the Notification under section 6 of the Land Acquisition Act was published in the Gazette dated 8th August 1986. The notices under section 9 of the Act were issued to the claimants and after hearing the claimants and other parties, the Land Acquisition Officer passed the Award on 6th October, 1988, awarding compensation at the rate of Rs.6/- per Sq.Mt. Against this Award passed by the Land Acquisition Officer, the claimants made Reference Application under section 18 of the Act for enhancement of the compensation, because according to them, the compensation awarded by the Land Acquisition Officer was not adequate. According to the claimants, the lands were fertile and it is their case that they were taking three crops out of these lands. It is also their case that the lands were situated in the village Saij, which is a developed village near Kalol Township and that the lands are also situated adjoining Ahmedabad-Mehsana Highway and GIDC Shed is situated on the Eastern side of the road. It is also their case that the the Industries like Mahendra Mills, Satyam Cinema are also situated in the sim of village Saij and GIDC Estate is also situated in the sim of village-Saij, and IFCO and ONGC Storage are also situated adjoining the acquired lands in the same village. On the premise as aforesaid, the claimants pointed out that the compensation given by the Land Acquisition Officer was not adequate and they should have been given compensation at the rate of Rs.200/- per Sq.Mt. The aforesaid claim of the claimants was traversed by the Special Land Acquisition Officer, on whose behalf, while denying the allegations of the claimants, it was contended that the compensation awarded

by the Land Acquisition Officer was adequate and the Reference Application should be dismissed.

3. The Reference Court framed the following issues for its determination :

(a) Whether the applicants prove that the compensation awarded is adequate.

(b) What additional compensation, if any, is entitled.

(3) What order, and Award ?

The Reference Court has found that the compensation awarded by the Land Acquisition Officer was inadequate and that the claimants were entitled to an additional compensation of Rs.84/- per Sq.Mt. over and above Rs.6/per Sq.Mt as has been granted by the Land Acquisition Officer. The Reference Court decided the Reference in terms as aforesaid, and directed that the Award be drawn accordingly. Both the sides have felt aggrieved against the order dated 31st July 1998, while Special Land Acquisition Officer for ONGC has filed First Appeals as above, the claimants have filed the Cross Objections claiming still higher compensation and they are not satisfied with the award of compensation at the rate of Rs. 84 + Rs. 6 =Rs.90/- per Sq.Mt.

4. Before we proceed to examine these appeals on merits, we may first deal with the preliminary objection which has been raised by Mr. S.K.Zaveri on behalf of the claimants that these appeals are not maintainable at the instance of the Special Land Acquisition Officer for ONGC. Mr. Zaveri submitted that under section 3 (c) of the Act, the expression "Collector" means a Collector of a District and Deputy Commissioner or any officer specially appointed by the appropriate Government to perform the function of Collector under this Act. Mr. Zaveri submitted that in the present case, "appropriate Government" is Central Government and the State Government had issued the Notifications with regard to the appointment of the Special Land Acquisition Officer for ONGC on the basis of the aforesaid power derived from the Central Government. Mr. Zaveri submitted that under the Land Acquisition Act, the Special Land Acquisition Officer or the Collector has no function to challenge the orders passed in the Reference and therefore the Special Land Acquisition Officer could not have filed these First Appeals against the Reference orders passed by the concerned Assistant Judge. He has also invited our

attention to the provisions contained in section 18 of the Act with regard to the reference to the court, and has submitted that the Collector or the Special Land Acquisition Officer for that purpose can not challenge the orders passed in Reference by the court under section 18 of the Act. In support of his submission as aforesaid, Mr. Zaveri has placed reliance on a decision of Lahore High Court, in the matter of Collector and Chairman, District Board, Gujaranwala VS Hira Nand, reported in AIR 1929, Lahore, 10. In the case before the Lahore High Court, the local Government had acquired a plot of land for the District Board of Gujaranwala and three persons who were interested in the acquired plot filed separate objections against the compensation awarded by the Land Acquisition Officer and accordingly 3 References were made to the District Judge of Gujaranwala. The District Judge recorded detailed reasons in one case only and for the reasons given therein awarded the amount of compensation in each case. Against this order, the appeals were preferred. In one of the appeals which had been filed as a first case, it was conceded that the District Board had no locus-standi to appeal, and it was argued that the appeals were on behalf of the Collector and that the addition of the words " and Chairman, District Board" after the word "Collector" was a superfluity. It was then found that he had no power of attorney from the Collector and the title of the case was described as " District Board, Gujaranwala through the Chairman, District Board, VS Hira Nand etc." It was also signed by the Chairman, District Board. Lahore High Court recorded that even if it is assumed that the Chairman was also the Collector of the District, he had not given any power of attorney in his capacity as such and that the Collector in Punjab is not Head of the District as he is in some other provinces of India. In the State of Punjab, he is a Revenue officer exercising certain powers under the Land Revenue and Tenancy Acts or some other special Acts, and the head of the district is the Deputy Commissioner. It was found that the land was acquired by the local Government and this being so, section 79 of Civil Procedure Code comes into play , which lays down that the suits by or against the Government shall be instituted by or against the Secretary of the State for India-in-Council. This rule must apply to appeals also. It was found that the appeals had been filed by a person not competent to do. On the other hand, the learned counsel for ONGC has argued that the Special Land Acquisition Officer is fully competent to appeal against the order passed by the Reference Court enhancing the compensation and the objections raised on behalf of the claimants by Mr.

Zaveri is wholly misconceived and the same is not at all tenable. In support of this submission, reliance has been placed on the decision of the Supreme Court in the case of Himalaya Tiles & Marbles (p) Ltd. VS F.V.Coutinho,reported in AIR 1980, SC. 1118. In para-7 and para-13 of the judgment, the Supreme Court has considered the import of the words 'interested person' as has been used in section 18 of the Act. The Supreme court has found that the definition of the 'person interested' is an inclusive definition and must be liberally construed so as to include all persons who will directly or indirectly be interested either in the title of the land or in the quantum of compensation. In the case before the Supreme court, the lands were actually acquired for the purpose of a company and once the land vests in the Government after acquisition it stood transferred to the Company under the agreement entered into between the Company and the Government. The Supreme court, therefore, held that it can not be said that the company had no claim or title to the land at all because under agreement, the company had to pay compensation and hence was concerned with the question of quantum of compensation. After considering judicial opinions expressed in several other cases, the Supreme court found that the judicial opinion seems to be of the view that the definition of 'person interested' must be liberally construed so as to include a body, local authority or a company for whose benefit the land is acquired. It was held that the company was undoubtedly a person interested as contemplated under section 18 (1) of the Act and the appeals which have been thrown out by the High Court on the ground that he had no locus-standi to file the appeal was found to be wrong.Reliance has also been placed on a decision reported in (1996) 2 , SCC, 332, Union of India & Ors. VS Special Tehsildar (ZA) and others. In this case, the lands were required by the Union of India and compensation to be paid was to be borne by the Department of Space. The State Revenue authorities urged the Department of Space to deposit the enhanced compensation amount in the court. The Department thereupon filed wirt petitions in the High Court praying that it should be impleaded as party in the appeals which were pending before the High Court as had been filed by the State Revenue authorities. The High Court held in the writ petitions that the Requisitioning Department, in the land requisition cases could not be considered as an interested party and therefore should not be impleaded as a party. This decision was challenged before the Supreme Court on the basis of the decision of the Constitution Bench in the case of U.P. Avas Evam Vikas Parishad VS Gyan Devi, reported in (1995) 2, SCC, 326, because

acquisition proceedings had taken place at the expense and for the benefit of appellants. Reliance was also placed on Union of India VS Shersngh, reported in (1993) 1, SCC, 608. The Supreme court did not find it necessary to decide the issues on merits because the writ petitions were found to be completely misconceived and held that the proper course was to apply to the appellate court for being impleaded as a party. The Department was thus relegated to the remedy of filing application for being impleaded as a party before the High Court in the proceedings in pending appeals. Mr. Thakore submits on the strength of this decision that the locus-standi of the present appellants to file and maintain these appeals can not be questioned.

5. In the case of The State of Maharashtra (Public Works Department) v. Bapurao Dnyanoba Chiddarwar and ors., reported in AIR 1973 Bombay 231, the Division Bench of the Bombay High Court considered the question as to whether the State can file appeal against the determination of compensation by the Reference Court. The preliminary objection was raised that the appeal filed by the State was not maintainable because the appeal really had been filed by the Collector and that the State is not entitled to file an appeal challenging the decision of the Court regarding determination of compensation. With reference to the decision in Re: Jerbai Mehta, AIR 1950 Bombay 243, it was submitted that in this decision, it has been held that the only person who is entitled to appear in a reference relating to compensation is the Collector as defined in Section 3(c) of the Act and hence the Government had no locus standi and in cases relating to apportionment, neither the Collector nor the Government has any locus standi whatsoever. In the case of Jerbai Mehta (supra), having regard to the entire scheme of the Land Acquisition Act, it was held that the only person who is entitled to appear in a reference relating to compensation is the Collector as defined in Section 3(c) of the Act and that in cases relating to apportionment, neither the Collector nor the Government has any locus standi whatsoever. After noticing the decision of Jerbai Mehta (supra), the Division Bench of the Bombay High Court in the case of State v. Bapurao (supra), took the view that the decision in the case of Jerbai Mehta (supra) must be restricted to the question as to who was entitled to appear in a reference under Section 18 by the Collector and that the question as to whether after the Court had given a decision on merits enhancing the compensation which was originally awarded by the Collector, the appeal should be filed only by the Collector and not by the

State Government, did not arise for decision in that case at all. The Division Bench of the Bombay High Court, in the case of State v. Bapurao (supra) then considered the observations made by the Division Bench of the Bombay High Court in yet another case of the Bombay High Court itself, i.e. Shankarlal v. Municipal Committee, Pusad, in First Appeal Nos.98 and 128 of 1958, decided on 29th January 1965 (Bombay), i.e. appeal arising out of a land acquisition matter filed by the State of Bombay through the Collector and the Division Bench held that, having regard to the observations in Jerbai Mehta's case (supra), the State of Bombay was not a proper party at all and ought not to have been allowed to file the appeal. It was then observed that the decision in the case of Jerbai Mehta (supra) did not directly deal with the question whether the State is entitled to file an appeal challenging the decision of the Court on a reference under Section 18 of the Act. This decision was cited before another Division Bench of the Bombay High Court in the case of Extra Assistant Director of Agriculture, Government of Bombay v. Chandrashekhar, First Appeal No.82 of 1993, decided on 6.8.1970 (Bombay). In that case, the appeal was filed by the Extra Assistant Director of Agriculture, Government of Bombay. An objection as was raised in the case of State v. Bapurao (supra), was also raised before the Court and reliance was also placed on the decision in the case of Jerbai Mehta (supra). The decision in Shankarlal's case (1965), i.e. First Appeal Nos.98 and 128 of 1958, decided on 29th January 1965 (Bombay) referred to above was also cited and the Division Bench held that in the earlier decision, it was accepted that the only person who was entitled to appear in reference relating to compensation was the Collector as defined in Section 3(c) of the Act. However, the real controversy in First Appeal No.82 of 1963 dated 6.8.1970 (Bombay) was not whether the State could file an appeal against the decision of the Court on a reference under Section 18, but the question was whether an appeal filed by the Extra Assistant Director of Agriculture was competent. The argument on behalf of the appellant in that case was that the acquisition having been made for the Department of Agriculture of the State, the Extra Assistant Director of Agriculture, as a representative of that Department was a person interested in the acquisition of the land and being a party to the proceedings must be deemed to have had a right to seek a reference under Section 18 of the Land Acquisition Act. It was this contention which was decided and the Division Bench held that the Collector represented all the interests, namely, of the State as also of any such acquiring body with whose funds and for whose benefits

any land is acquired and, therefore, they did not accept the submission made on behalf of the appellant that the Extra Assistant Director of Agriculture was a person interested in acquisition proceedings before the Collector and, therefore, he had a right to appear in the subsequent case. It is significant to note that though the earlier decision of the Division Bench in Shankarlal's case (supra) was positively cited, the learned Judge had concurred with the view which was taken by the Division Bench of the Nagpur High Court in R.S.Deoji Dharsi v. Ghisulal, reported in AIR 1953 Nagpur 256. In the Nagpur case, the Division Bench had taken the view that the party competent to file an appeal against the decision on a reference under Section 18 of the Act was either the Collector or the Provincial Government, but not a company for whose benefit the acquisition proceedings were taken. Citing this decision with an approval, the Division Bench observed that, this decision was therefore a specific authority where the only person to seek the reference under Section 18 was the claimant and the only person who could challenge the decision of the District Judge in the reference under Section 18 was either the Collector or the Provincial Government but not a Company for whose benefit acquisition proceedings were taken. After considering the analysis of the decisions as aforesaid rendered by the Bombay High Court and the Nagpur case, the Division Bench of the Bombay High Court in the case of State v. Bapurao (supra) agreed with the view taken by the Gujarat High Court in the case of Gautamlal v. Land Acquisition Officer, reported in AIR 1970 Gujarat 81, in which it was held that the only parties to the reference under Section 18 were the claimants on the one hand and the Collector on the other because in the acquisition proceedings, the Collector represents all the interests, namely, of the State as also of any such acquiring party with whose funds and for whose benefits the land is acquired. The observations made by the Division Bench in Shankarlal's case (supra) that the State could not file an appeal against an order of reference made under Section 18 of the Act were not accepted by the later Division Bench and it was observed that those observations were supported by the decision in Jerbai Mehta's case (supra). In this case of State v. Bapurao (supra), the Division Bench also further observed that when the Collector acts in proceedings relating to acquisition of land or for determination of compensation in respect of the acquired land, he acts entirely on behalf of the State Government and the object of the inquiry made by him which finally culminates by an award is merely to determine a sum which the State can offer to the person whose property is being

acquired as compensation for the land which is the subject matter of the acquisition.

6. The study of the ratio laid down in the cases as aforesaid makes it amply clear that the Special Land Acquisition Officer is certainly an interested person and he represents the case of the State as well as the bodies for whose benefit the land is sought to be acquired. He is certainly a person interested in the question relating to the quantum of compensation and therefore adequacy or otherwise of the amount of compensation as determined by the reference court under section 18 may be appealed against by the Special Land Acquisition Officer also and so far as Lahore High Court decision (supra) on which reliance has been placed by Mr. Zaveri is concerned, it has no application on the facts of the present case and it can not be said that it is not the function of the Land Acquisition Officer to challenge the order passed by the reference court with regard to the award of compensation. The decision of the Division Bench of Bombay High court, as reported in AIR 1973, Bombay, 231, has been given while agreeing with the decision of our own High Court i.e. AIR 1970, Guj, 81, and there is no reason to take a different view than what has already been taken by our own High Court and the Bombay High Court on this aspect of the matter. The appeals are therefore held to be maintainable at the instance of the Special Land Acquisition Officer under section 3 (c) of the Act and the preliminary objection raised on behalf of the claimants against the maintainability of the appeals at the instance of the Land Acquisition Officer is hereby rejected and it is held that the Special Land Acquisition Officer is competent to file these appeals.

7. Coming to the merits of the impugned order, for the purpose of considering and appreciating the evidence oral as well as documentary, we find that on behalf of the claimants, six witnesses have been examined, witness no.1 being Shakraji Chelaji Thakore, at Ex.51; witness no.2 Bhikhubhai Ramjibhai Rami, at Ex.75; witness no.3 Rameshbhai Natvarlal Patel at Ex-76; witness no.4 Chauhan Devendrasinh Rampalsinh at Ex.78; witness no. 5 Satpalsinh Vrajkishorsinh at Ex.80; and witness no.6 Chhanaji Mathurji at Ex.82. As against it, ONGC has examined only one witness viz. Balubhai Jivanbhai Chaudhari at Ex.84. While no documentary evidence was produced by the ONGC except placing reliance upon map Ex.87, claimants produced Village Forms 7/12 at Exs. 11 to 42, 52 to 74 and certified copies of the judgments of the Land Acquisition Reference Nos. 69/86 to 73/86 at Ex.44 and valuation report at Ex.47 and sale-deeds at

Exs. 77, 79 and 81 in support of their case. The witnesses who have been examined on behalf of the claimants have deposed that the lands under acquisition are situated in the Sim of village-Saij; that the lands were fertile; village Saij is situated near the township of Kalol; lands acquired are just adjoining to the South-East of Kalol; that the acquired lands are adjoining Ahmedabad-Mehsana Highway and the same are situated on the Western side of the Highway; that the prevailing market value of the acquired lands, at the time of acquisition was more than Rs.200/- per Sq.Mt, and in this regard, reliance has been placed on sale instances at Exs. 77, 79 and 81, according to which, the lands were sold at the rate of Rs.161/- per Sq.Mt, at the rate of Rs.152/- per Sq.Mt. and Rs.152/- per Sq.Mt. The sale-deed Ex.77 was executed on 24th January, 1983, sale-deed Ex.79 was executed on 20th November, 1985 and sale-deed Ex.81 was executed on 20th November, 1985. Whereas, the Notification under section-4 was published on 1st April, 1986, and on that basis, it has been submitted that all these documents were executed prior to section-4 Notification, these sale instances could be taken into consideration while awarding compensation, and that these lands under the sale-deeds, as aforesaid, were just near the acquired lands and that there is a highway in between adjoining ponds on each side. The acquired lands have similar advantages and similar potentials. It has also been said that they are adjoining to each other and the acquired lands are touching the boundary of Kalol town. Strong reliance has been placed by the claimants on the judgment of Land Acquisition reference No. 252/88 at Ex.43 and that in Land Acquisition Reference No. 69/86 to 73/86 at Ex.44.

8. While referring to the cross-examination of these witnesses, Mr. Thakore has pointed out that the witness no.1 Shakraji Chelaji at Ex.51 has stated that Kalol bus-stand and Railway station were 1 Km. away from the village in question i.e. Saij; riksha-fare is Rs.1-50 for going to Kalol from Saij; GIDC is 1/2 Km away from Saij. A suggestion was also made to this witness that the land in question was not adjoining to the Highway. Of course, the said suggestion has been denied. Witness no.2 Bhikhubhai Ramjibhai Rami at Ex.75 is a Valuer to whom it was suggested in the cross-examination that the rates in his valuation report were that of the year 1994 and that he had only looked into the copies of the Index with regard to the Survey Nos. 140/P, 66/2, 150/140 etc., and that he had not considered the other documents relating to the sale in which the price of the land was less and that he had looked into only those sale-deeds

which were produced by the claimants, he had not even called upon the claimants to produce other documents in which the land was sold out at a lesser price; that he had not seen the land in question when they were acquired. Next witness i.e. witness no.3 Ramesh Natvarlal Patel at Ex.76 was a partner of Rivera International, who had purchased plot no.159 from GIDC at the rate of Rs.161/-per Sq.Mt. In cross examination, this witness has pleaded ignorance as to whether the land purchased by him was an agricultural land or not, but had stated that at the time when he purchased the plot, the construction work was going on in other plots; that he had not seen any land other than that of Shakraji, and has also stated that he does not know whether there is any well in the land of Shakraji, and then he has stated that he had not gone to the field of Shakraji. Witness no.4 Chauhan Davendrasinh Rampalsinh at Ex.78 had purchased the land of S.No. 140 of village Saij admeasuring 45 Sq.Mt. for a sum of Rs.7000/- at the rate of Rs.152/-per Sq.Mt. In cross-examination, this witness has stated that he was rendering services in the Security, that the land which he purchased from village Saij is near Kalol and is surrounded by agricultural fields. He has denied the suggestion that the lands adjoining to the lands purchased by him were of lesser market value. Witness no.5 Satpalsinh Brajkishorsinh at Ex.80 is again a purchaser of the land of S.No.140 of village Saij for a sum of Rs.7000/- at the rate of Rs.152/- per Sq.Mt. In cross-examination, he has stated that the plot purchased by him was NA land, whereas other plots adjoining to it are agricultural land. He has denied the suggestion that he had purchased this plot at a higher rate in comparison to the rates at which the land by the side of the plot purchased by him was available. Sixth and the last witness i.e. Chanaji Mathurji at Ex.82 is a claimant in Land Acquisition Reference case No. 516/90. In cross-examination, he has stated that his land was also acquired by the GIDC and the possession was taken on 7th December, 1984. GIDC had paid him the rent of Rs.2,500/-per Bigha, and that he had been called by the Valuer in his office, but the Valuer had not come for the evaluation of the price of the land. The only witness who was examined on behalf of the present appellants is one Babulal Jivanbhai Chaudhari at Ex.84. This witness was serving in the office of the Land Acquisition Officer for ONGC, who has stated that till 1988 he was working as a Clerk in the very same office, that he had seen the lands under acquisition, the lands acquired were about 1 Km. away from Mehsana-Kalol High way, He has referred to a map signed by Deputy Town Planner, Mehsana, which according to him, had been

produced for showing the lands which have been acquired, it was exhibited at Ex.87. It appears from the statement of this witness that marking of the exhibit on this document i.e. map was objected to on behalf of the claimants, but the objection was over-ruled. It appears from the cross-examination of this witness that he was not put to any cross-examination on the question of the land being 1 Km. away from Mehsana-Kalol Highway. Thus, it has been submitted that the acquired lands were not comparable with the lands which were concerned in the documents at Exs. 43 and 44 and that the sale instances could not have been made the basis for the purpose of awarding compensation. It has also been submitted that on the basis of the oral as well as the documentary evidence, the claimants failed to establish that the land which has been acquired is on the National Highway and it also can not be said that this land is situated in as developed area as Kalol itself, and even if it is taken that there are about 200 factories in village Saij, the lands which have been acquired can not be said to be a part of the developed land such as were there in village Kalol itself and as were concerned in the land acquisition reference about which the documents Exs. 43 and 44 have been sought to be relied upon. It has been submitted that the lands were situated much away from the National Highway and were in the interior; were away even from the State Highway, can not be compared with the lands which are adjoining to the High way nearby the developed township and that Kalol is a village which is situated on the National Highway itself, while village Saij is far away from the National Highway and there can not be any comparison with the land concerned in Exs. 43 and 44. The Notification under section 4 has been published on 15th January 1986, while the possession had been taken on 28th July 1983. This land is situated on the cross-roads of Kalol-Vijapur and Gandhinagar-Chhatral enterance roads, it was covered under AUDA Scheme which was surrounded by factories and bungalows of the society; Kalol Railway station and bus-stand is only 1/2 Km. away. The land which is concerned in Land Acquisition Reference No. 69/83 to 273/86 i.e. Ex.44 was a land which was acquired for ONGC itself for which section 4 Notification was published in the Gazette on 28th July 1983, and section 6 Notification was issued on 16th February 1984. Three crops were being taken from this land. While referring to the production of crops, the net income of Rs.50.000/was derived. The lands were situated in village Saij and Kalyanpur near Saij and Kalol. It was not in dispute that same were situated on the Highway and the nearby area was highly developed area. In this case, the compensation at the rate of

Rs.80/- per Sq.Mt. was given.

9. There is no doubt that in the instant case, the land acquired form a big chunk of land and so far as the location of this land is concerned, it is not that prime location as it was in the case of Exs. 43 and 44. Our attention was also invited to the Award by Mr. Thakore in order to show the location of this land in the Award dated 30th August, 1988. While describing the location of the land, it has been mentioned that the lands sought to be acquired were about 6 Kms. away from the Headquarters of Kalol and it was near Railway station Saij-Kalol, and village Saij was nearby the State Highway. The lands acquired were of course with the Railway lines on the Western side of the village. The village Saij was about 18 Kms. away from Gandhinagar and it was about 3 Kms. away from GIDC Kalol.

10. While placing reliance on the decision of the Supreme Court rendered in the case of LAND ACQUISITION OFFICER & SUB COLLECTOR, GADWAL VS SREELATHA BHOOPAL (SMT) & ANR, reported in (1997) 9, SCC, 628, it was submitted by Mr. Thakore on behalf of the appellants that even if the Award of the Land Acquisition Officer is not an evidence stricto sensu, with a view to do substantial justice, the court can look into it and consider the material collected therein. Thus, no withstanding the admissibility or otherwise of the map Ex.87 on which the reliance was placed by the Government witness who was examined in favour of the appellants in the Land Acquisition Reference, after going through the judgments in Land Acquisition References at Exs. 43 and 44, the oral evidence etc. if we look into the Award for the limited purpose as has been held to be permissible by the Supreme Court in the case as aforesaid, it leaves no room for doubt that the lands acquired, in the instant case, are not situated on the National Highway, nor even adjoining to the State Highway nor the same are situated in as developed area as Kalol town itself, same are in the interior, but near the Railway lines of the Railway Station Saij-Kalol and of course this land can be said to have been situated in industrially developed area as it has come on the record that there are about 200 factories and that as has been mentioned in the Award itself, the development of the village Saij has been going on in view of the factories and oil-wells, there is electricity and telephone facilities, pipe lines, Hospitals and there were Primary and Secondary Schools in this village.

11. Mr. Thakore has placed strong reliance on the decision of SPECIAL LAND ACQUISITION OFFICER & ANR VS

PATEL BHAGWANDAS K. & ANR. reported in 37 (1) GLR, 481 and submitted that a distinction has been made while determining the market price with regard to the sale instances of a small plot as against the big chunk of the land. In this cas, the Division Bench has referred to the decision of the Bombay High Court in the case of Bombay Improvement Tryust VS Marwanji Manekji Mistry, reported in AIR 1926 Bom. 420, and has quoted the following observations at page 498 from the Bombay judgment (supra) :

> Thus when it becomes inevitable for the court to fix the market value of the acquired land with building potentiality on the basis of the price fetched by sale of a building plot in a developed lay out of building plots in the vicinity, it must in our view fix the wholesale market value of the acquired land with building potentiality at one-third to one-half of the retail price got by genuine sales of plots in a developed lay out in the vicinity by deducting two-thirds to one-half out of the retail price of plots, as losses or expenses involved in having made the land where the plots are formed as developed according to the degree of development...:

Apart from it, the Division Bench has taken note of the observations of the Bombay High court that even if there is no cross-examination of the witness because evidence resulted thereof has not been adduced, the court is required to accept the statement of the witnesses for claimants on the basis of probabilities and in such case the court will be performing duty justly expected of them. We also find that the Division Bench after considering the situation of the lands acquired in that case, the evidence led by the parties and on a statement made before the court and after considering various decisions, drawn a reasonable inference of the market rates of the lands as in November 1979 i.e. as on the date of the acquisition and it determined the rates accordingly i.e. as per the reasonable inference. Thus, according to the aforesaid decision of the Division Bench, reasonable inference has to be drawn on the basis of the material available keeping in view the situation

12. Mr. A.J.Patel while making reference to the documentary evidence, i.e. Village Forms, Pani Patrak and the evidence available in this case, to which reference has already been made hereinabove, has heavily relied upon the decision in the matter of SPECIAL LAND

ACQUISITION OFFICER, KHEDA & ANR VS VASUDEV CHANDRASHANKAR & ANR, reported in 1998 (1) LACC, 234. In this decision it has been held that for determining the market value of the land, the award pertaining to the acquired land of the same village offers best instance , the Supreme Court held that the question whether the assessment of the compensation made by the reference court is vitiated by any error of principle of law warranting interference has to be decided on the basis of the well settled legal position that the award of the reference court relating to the same village of the similar land possessed of the same quality of land and potential, offers a comparable base for determination of the compensation. The Supreme court held that the land under acquisition were situated at the outskirts of the village, but in absence of any tangible material brought on record, as regards the distinctive features of differentiation between the quality of the lands in dispute and the lands in respect of which the citation was made claiming similarity, it was difficult to find out whether reference court had applied any wrong principle of law in determination of the compensation. In absence of any distinct material brought on record, even in the cross-examination of the witnesses, and keeping in view that the award on the basis of which compensation was sought had attained finality, the Supreme Court declined interference where the compensation was awarded by the reference court at the rate of Rs.2100 per Are. In case of THE STATE OF MADRAS VS A.M.NANJAN & ANR, reported in (1976) 1, SCC, 973, the award of compensation was based on consideration of awards of comparable lands in reasonable proximity and on facts it was found that the proper consideration was applied by the High court and the award was not based on conjecture. The Supreme court held that if the land involved in the awards is comparable land in the reasonable proximity of the acquired land, the rates found in the said documents would be a reliable material to afford a basis to work upon for determination of the compensation on a later date. In case of KRAPA RANGIAH VS SPECIAL DEPUTY COLLECTOR, LAND ACQUISITION, reported in (1982) 2, SCC, 374, keeping in view the fact that area was comparable and situation was the same in both the cases, it was held that the rate for acquisition of the land in question must be the same as that awarded subsequently. Accordingly the compensation was enhanced with consequential increase in solatium and interest. In the case of ADMINISTRATIVE GENERAL OF WEST BENGAL VS COLLECTOR VARANASI, reported in AIR 1988, SC 943, it was held that for the purpose of determining market value, the land with potentialities for urban use, price fetched

for lands similar to acquired land with similar advantages and potentialities at or about the time of preliminary notification constitute best evidence. In case of large extent of land with potentialities for urban use, price fetched for small developed plots would be relevant on fulfillment of certain conditions and it can not be directly applied as in case of price fetched for small developed plots because in case of developed plots it reflects the retail price and with regard to the necessary development expenses that follow it is to be fixed by working out about 40% of the retail price and the Supreme court declined to interfere. Mr. Patel has also cited the case of Chimanlal VS Special Land Acquisition Officer, Poona, reported in AIR 1988, SC, 1652, in which only 25% amount was paid as development expenses. In the case of Special Tehsildar Land Acquisition, Vishakha Patnam, VS A.Mangala Gouri, reported in AIR, 1992, SC, 666, and in the case of Vijaykumar VS State of Maharashtra, reported in AIR 1981 SC, 1632, only month-wise deductions were made against development expenses. These authorities were cited by Mr. A.J.Patel in the context of Special Land Acquisition Officer VS Patel Bhagvandas (supra) according to which deductions were to be made from 2/3rd to 1/2. While emphasising the applicability of the awards in other cases i.e. Exs. 43 and 44, Mr. Patel has cited a decision in the case of PAL SINGH & ORS VS UNION TERRITORY OF CHANDIGARH, reported in AIR, 1993, SC, 225, in which the Supreme Court has observed in para-5 that," No doubt, a judgment of a court in a land acquisition case determining the market value of land in the vicinity of the acquired lands, even though not inter parties, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced. But what can not be overlooked is that for a judgment relating to the value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances it could furnish the basis for determining the market value of the acquired land. With regard to the particular case which was under consideration, it was found that the petitioners who were claimants claiming enhanced compensation for their acquired land had not produced the judgment of the High Court on which they proposed to rely for finding the market value of the acquired lands as evidence in their cases, not that they could not have done so for the reason that it was not a judgment available to them as a previous judgment

relating to market value of land in the vicinity. Hence, there was no justification to act upon subsequent judgment of the High Court to enhance market value of the acquired lands of the petitioners merely because it was claimed on their behalf that the market value of the lands concerned therein could become evidence for determining the market value of the lands concerned in the appeals. Mr. Zaveri has placed reliance on the case of THE STATE OF MADRAS VS A.M. NANJAN & ANR, reported in AIR 1976, SC 651 to show that in the case before the Supreme court, the lands involved in three transactions which were considered, were in a village four miles away from the acquired land and the Supreme Court did not accept the submission that the awards in question could not be taken as safe guidelines in the matter of determination of the compensation. The Supreme court found that these awards were atleast relevant material and maybe in the nature of admission with regard to the value of the land on behalf of the State and if the land involved in the awards is comparable land in the reasonable proximity of the acquired land, the rates found in the said documents would be a reliable material to afford a basis to work upon for determination of the compensation on a later date. Mr. Zaveri has also placed reliance on the case of HINDUSTAN OIL MILLS LTD. & ANR VS SPECIAL DEPUTY COLLECTOR (LAND ACQUISITION), reported in AIR 1990 SC 731 . In this case, on the question of determination of the market value of the acquired land, it has been considered that the price of the land sold out four years before was Rs.5/- per Sq.Yd. The said land was fairly extensive as compared to the land under acquisition and taking note of the rise in the price over four years, the market value was fixed at Rs.9/- per Sq.Yd instead of Rs.5/- per Sq.Yd. In this very case before the Supreme court with regard to another set of land belonging to one Sampatlal, it was observed that infact they form part of a big area in particular Survey Number, but they belonged to different owners and the land of Sampatlal was away from the main road. The Supreme court found that the High court was therefore justified in fixing its value at Re.1/- per Sq.Yd. less than the compensation awarded in respect of the land of the Company and therefore in that case compensation in respect of the lands of Sampatlal was fixed at Rs.8/- per Sq.Yd. In the matter of KRISHNA YACHENDRA BAHADURVARU VS THE SPECIAL LAND ACQUISITION OFFICER, CITY IMPROVEMENT TRUST BOARD, BANGALORE reported in AIR 1979, SC 869, it was held that estimation of market value in many cases must depend largely on evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess. In this case before the Supreme

court,four different acquisitions were made out of the same plot of land comprising Survey Nos. 6, 9, 10 and 11 and in respect of the first acquisition under Notification dated 18th April, 1936, compensation was finally determined at Rs.6/- per Sq.Yd. while in respect of the fourth acquisition made under Notification dated 2nd April 1956, compensation was awarded at the rate of Rs.12/- per Sq.Yd. and this award was allowed to become final. The Supreme court was concerned with second and third acquisition which were made under respective Notifications dated 30th October 1951 and 28th January, 1954. The High court proceeded on the basis that rate of compensation in respect of both these acquisitions would be the same because there was hardly any difference in the market value of the land comprised in S.Nos. 6, 8,, 10, and 11 between 30th October 1951 and 28th January 1954. It was not in dispute that quality of the land acquired under the Notifications dated 30th October 1951 and 28th January 1954 were not different from that of the land acquired under the notifications dated 18th April 1946 and 2nd April 1956. The Supreme court found that if the market value of the same quality of the land in the same area was Rs.6/- per Sq.Yd on 18th April 1946 and Rs.12/-per Sq.Yd. on 2nd April 1956 it would be reasonable to take the market value on 30th October 1951 and 28th January 1954 at Rs.9/- per Sq.Yd being the amount of Rs.6/- and Rs.12/- per Sq.Yd. After considering the facts, as aforesaid, the Supreme court ultimately concluded as under in the end of para-3 :-

> "We are conscious that this process of determination of market value adopted by us may savour of conjecture or guess, but the estimation of market value in many cases must depend largely on evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess. We do not therefore think that we would be unjustified in taking the market value of the land acquired under the notification dated 30th October 1951 and 28th January 1954 at Rs.9/- per Sq.Yds."

13. In rejoinder, the learned counsel for the appellants cited a decision in the case of P.Ram Reddy VS Land Acquisition Officer, reported in (1995) 2, SCC, 305, wherein the Supreme Court has observed that a simple method has been evolved by the courts in determining the market value of the acquired land with potentiality,

retail price to be fetched by sale of plots in a fully developed area as on the date of publication of the Notification under section 4 (1) of the Act. Reliance has also been placed on the decision in the case of BASANTKUMAR & ORS VS UNION OF INDIA & ORS, reported in (1996) 11, SCC, 542, and it is held that the doctrine of equality in determination and payment of same compensation to all claimants covered by the same notification is not a good principle and treating entire village as one unit and uniformly determining compensation on that basis is not sustainable. The court must determine market value prevailing as on the date of notification under section 4 (1) and not what was claimed by the parties and in this regard even estimate of claimants is not decisive. So far as the deduction towards development charges are concerned, if the land is not developed, it has been held that atleast 1/3rd of the compensation has to be deducted towards providing amenities like roads, parks, electricity sewage, water facilities etc.. Decision in the case of BASAVVA (SMT) & ORS VS SPL.LAND ACQUISITION OFFICER & ORS, reported in (1996) 9, SCC, 640, was cited on behalf of the appellants to show that even 65% deduction was held to be permissible.

On consideration of the principles laid down as aforesaid, following points appear to be relevant for determination of compensation :

(a) Location of the land has to be considered and as to what extent it is comparable with other instances;

(b) A distinction has to be made between the price of the land in case of small plots and big chunk of the land.

(c) If the sale instances in other identical cases are sought to be relied upon for the purpose of determination of the market value, it has to be seen as to what were the points of differentiations and distinctive features and what is their proximity with the land sought to be acquired.

(d) Whether the land sought to be acquired is in the undeveloped area or the area in the process of being developed.

(e) The determination of the market value has to be made primarily on the basis of the material and

the evidence made available in a given case so as to apply the other instances of the earlier awards.

(f) The determination of the market value can not be made with a mathematical exactitude and therefore it would certainly involve an estimation and guess work. For the purpose of arriving at a market value of the lands sought to be acquired there can not be a golden scale.

15. If we apply the aforesaid principles on the facts of this case so as to make use of the other instances and the documents Exs. 43 and 44, we find that the location of the land sought to be acquired is not exactly the same as it was in the case of Exs. 43 and 44. There are several distinctive features as have been noted hereinabove in as much as the land in question is not adjoining to the National Highway nor even to the State Highway and it is also clear that it is a distance of 1 Km. or little more than that. It is in the interior, but near the Railway station. At the same time, the land which is sought to be acquired is situated in an area which can be said to be an industrially developed area even if it is not adjoining to the Highway, several industries and oil-wells have come up in this area. The reference court has fixed the rate of Rs.90/- per Sq.Mt. The appellants have filed these appeals challenging that the rate fixed at Rs.90/- per Sq.Mt. is excessive and the claimants have filed Cross Objections claiming Rs.110/-per Sq.Mt. In Ex.44, the land which was concerned, appears to be the land nearest to the land which is acquired in this case. But the difference is that the land concerned in Ex.44 is near the village site and adjoining to the State Highway, whereas the land in question is away from the State Highway, but near to the Railway station. Moreover, the land which is concerned in Ex.44 was only 13000 Sq.Mts. whereas the land which is sought to be acquired in this case is more than 2,24,200 Sq.Mts. and therefore, in no case the rate in the instance case can be determined beyond Rs.80/- per Sq.Mt. Keeping in view the less important location of the land in question as compared to the land concerned in Ex.44, if we make deduction of 20% of 80 i.e. Rs.16/per Sq.Mt. it would come out to Rs.64/- per Sq.Mt. and then again add 20% for two years because in case of Ex.44 the date of Notification was 28th July 1983, whereas in the instant case it is 20th December 1985, it would again come out to Rs. 64 + 16 = Rs.80/- per Sq.Mt. and therefore we find that the best evidence which has been relied upon by the claimants themselves with reference to

Ex.44, the rate in the instant case could not be determined more than Rs.80/per Sq.Mt. Since we have come to the conclusion that the rate could not be determined for more than Rs.80/- per Sq.Mt. there is no basis for us to consider the question of enhancement of compensation from that of Rs.90/- to that of Rs.110/- as has been claimed by the claimants through the Cross Objections.

16. The result of the aforesaid adjudication, based on the ratio and the principles decided by the Supreme Court decisions as aforesaid is that all these 26 Appeals partly succeed and we fix the rate at Rs.80/- per Sq.Mt. instead of Rs.90/- per Sq.Mt. as has been ordered by the reference court vide order dated 31st July 1995 and all the 26 Cross Objections filed by the claimants fail. All these 26 appeals are partly allowed as above and all the 26 Cross Objections are rejected accordingly. The impugned order dated 31st July 1995 stands modified accordingly. The order passed by the reference court does not warrant any interference in any other aspect and except for the reduction of the rate from Rs.90/- per Sq.Mt. to that of Rs.80/- per Sq.Mt. all other dues of the claimants shall be paid as ordered by the reference court in its order dated 31st July, 1995. All legal consequences to follow. No order as to costs.

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JOSHI